

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
CAMDEN VICINAGE

HECTOR HUERTAS,

Plaintiff,

v.

CITIGROUP, INC., et al.,

Defendants.

Civil No. 13-2050 (RMB/JS)

MEMORANDUM ORDER

This matter comes before the Court upon a Motion to Dismiss by Defendant Citibank [Docket No. 12], and several motions by Plaintiff, Hector Huertas: a Motion for Summary Judgment [Docket No. 19], Motion for Default Judgment or for Summary Judgment [Docket No. 85], and an Amended Motion for Default Judgment or for Summary Judgment [Docket No. 90].

Plaintiff was granted permission, in part, to file an Amended Complaint on January 30, 2014 [Docket No. 87]. Plaintiff filed the Amended Complaint (titled "Second Amended Complaint") on February 5, 2014 [Docket No. 91]. The filing of Plaintiff's Amended Complaint renders both Citibank's Motion to Dismiss, [Docket No. 12], and Plaintiff's opposition to that motion, entitled a "Motion for Summary Judgment" [Docket No. 19], moot and, as such, both motions shall be denied.

Plaintiff's remaining motions, the Motion for Default Judgment or for Summary Judgment [Docket No. 85], and the Amended Motion for Default Judgment or for Summary Judgment [Docket No. 90] are almost identical. These motions request "default judgment against Citibank, N.A., on Counts 1 and 2 of original complaint or, alternatively, for summary judgment." As Plaintiff is asking for judgment based on his original complaint, which has been supplanted by the subsequently filed Amended Complaint, these motions shall similarly be dismissed as moot.

Moreover, under Federal Rule of Civil Procedure 55, entry of default by the clerk of the court is a necessary prerequisite to default judgment. Nationwide Mut. Ins. Co. v. Starlight Ballroom Dance Club, Inc., 175 F. App'x 519, 521 n.1 (3d Cir. 2006). Because Citibank has appeared in this matter, there has been no entry of default as required. Finally, to the extent Plaintiff requests summary judgment, his motion is premature as Plaintiff makes several arguments in his motion with respect to discovery and the deadline for fact discovery does not close until April 30, 2014 [Docket No. 88].

ACCORDINGLY IT IS HEREBY on this 6th day of February 2014,
ORDERED that Defendant's Motion to Dismiss [Docket No. 12] is DENIED without prejudice; and

IT IS FURTHER **ORDERED** that Plaintiff's Motion for Summary Judgment [Docket No. 19] is DENIED without prejudice; and

IT IS FURTHER **ORDERED** that Plaintiff's Motion for Default Judgment or for Summary Judgment [Docket No. 85] and Amended Motion for Default Judgment or for Summary Judgment [Docket No. 90] are DENIED without prejudice.

s/Renée Marie Bumb
RENÉE MARIE BUMB
United States District Judge